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EVIDENCE — ILLEGALLY OBTAINED EVIDENCE — UNLAWFUL SEARCH OF PERSON. — The defendant was illegally arrested and searched, on suspicion that he was implicated in a recent murder. He was found to be carrying a concealed weapon. *Held*, that evidence of this fact was improperly admitted in a trial for carrying a concealed weapon. *Jackson v. State*, 66 S. E. 982 (Ga., Ct. App.).

At common law, evidence was never excluded because illegally obtained. *Bishop Atterbury's Trial*, 16 How. St. Tr. 323, 495. And in a prior well-considered case, the Georgia Supreme Court held, in accordance with the weight of authority, that a constitutional prohibition against unreasonable searches and seizures did not alter this rule, with regard to evidence so obtained. *Williams v. State*, 100 Ga. 511. But see *Boyd v. United States*, 116 U. S. 616. The principal case, however, was put on the ground that since the evidence was conclusive of the defendant's guilt, it was equivalent to an involuntary confession, and hence inadmissible. But confessions, according to the better opinion, are excluded only when the method of obtaining them renders them unworthy of credit. See *Commonwealth v. Morey*, 1 Gray (Mass.) 461. The fact that the production of this evidence was not due to the defendant's own act is also fatal to the contention that the defendant, in spite of his constitutional privilege, was compelled to give testimony tending to incriminate himself. *Chastang v. State*, 83 Ala. 29. Consequently, if this decision is upheld, it will practically nullify the effect of the earlier ruling in the same jurisdiction. The case illustrates the tendency of the courts to favor defendants in criminal actions at the expense of settled principles of law.

EXECUTORS AND ADMINISTRATORS — RIGHTS, POWERS, AND DUTIES — EXECUTOR'S RIGHT TO REIMBURSEMENT FOR EXPENSES OF UNSUCCESSFUL CONTEST. — The plaintiff, as executor, offered a will for probate and defended it in a contest which resulted in its disallowance. The plaintiff then sought to recover from the administrator his expenses in the probate proceedings. *Held*, that the plaintiff cannot recover. *Dodd v. Anderson*, 42 N. Y. L. J. 2189 (N. Y., Ct. App., Feb. 15, 1910).

An executor named in a will which is not admitted to probate can be reimbursed out of the estate for expenses fairly incident to his duty as proponent. See 2 WOERNER, AMERICAN LAW OF ADMINISTRATION, § 517. But the authorities are in conflict as to how far his duty requires him to defend the will. By some decisions an executor should merely offer the will for probate and not enter a contest of *devisavii vel non* with the heirs at law. *Brown v. Vinyard*, Bailey Eq. (S. C.) 460, 462. See *Yerkes's Appeal*, 99 Pa. St. 401. If he does defend, he must look to the devisees and legatees for his expenses. *Shaw v. Moderwell*, 104 Ill. 64, 70. See *Yerkes's Appeal*, *supra*. Other courts require an executor reasonably believing the will to be valid, to exhaust all legal means to establish it. *Lassiter v. Travis*, 98 Tenn. 330; *Henderson v. Simmons*, 33 Ala. 201; *Phillips' Ex'r v. Phillips' Adm'r*, 81 Ky. 328. The executor is here regarded as the guardian *ad litem* of the devisees. *Hazard v. Engs*, 14 R. I. 5. But that affords no reason why the heirs at law should pay the costs of an unsuccessful effort to deprive them of their property. It is submitted that the main case properly puts the burden upon those who will receive the benefit.

INSURANCE — CONSTRUCTION AND OPERATION OF CONDITIONS — "SELF-DESTRUCTION, WHETHER SANE OR INSANE." — A life insurance policy provided that "in the event of the death of the insured by self-destruction, whether sane or insane, . . . the liability of the company shall be only for the return of the premiums." When the insured shot himself he was so insane as not to know that he was taking his life. *Held*, that the beneficiary may recover the full amount of the insurance. *Inter-Southern Life Insurance Co. v. Boyd*, 124 S. W. 333 (Ky.). See NOTES, p. 557.

INTERSTATE COMMERCE — CONTROL BY CONGRESS — ACTION BY COURTS PRIOR TO ACTION BY THE INTERSTATE COMMERCE COMMISSION. — A coal company brought mandamus against a carrier to compel a more equitable distribution of coal cars during a car shortage. *Held*, that the petition should be dismissed, since the Interstate Commerce Commission has not acted. *Baltimore & Ohio Railroad Co. v. United States ex rel. Pitcairn Coal Co.*, 215 U. S. 481.

For a discussion of the principles involved, see 22 HARV. L. REV. 524.

INTERSTATE COMMERCE — INTERSTATE COMMERCE COMMISSION — POWER TO REGULATE PRO RATÂ DISTRIBUTION OF CARS. — The Interstate Commerce Commission ordered the defendant railroad in making its *pro ratâ* distribution of coal cars to shippers during a car famine, to include in the share of each mine owner the fuel cars of the railroad which were used to transport coal purchased at the mine by the railroad for its own use. *Held*, that the order is a proper exercise of the powers of the commission. *Interstate Commerce Com. v. Ill. Cent. Ry.*, 30 Sup. Ct. 155.

The power to regulate commerce includes the power to regulate the instruments of commerce. *Hopkins v. United States*, 171 U. S. 578, 597. The Interstate Commerce Commission has, therefore, the power to compel pro-rating of cars among shippers to prevent unjust discrimination. And in the exercise of this power it may order that the private cars of a shipper be deducted from the number of cars to which he is entitled. *United States v. B. & O. Ry.*, 165 Fed. 113. In the principal case, however, the fuel cars were being used to transport coal which already belonged to the railroad and had therefore ceased to be an article of commerce. The right of the railroad to buy from whomever it chooses is conceded by the court. So if the fuel cars were not included in the share of each mine owner, he would receive a preference merely as a coal seller. Only indirectly would coal shippers be affected, to which class alone the railroad owes a duty. Such a discrimination, however, though indirect, is none the less real. The policy of preserving free competition is perhaps a sufficient justification for the liberal interpretation of the commission's power which the decision of the principal case necessitates.

MUNICIPAL CORPORATIONS — MUNICIPAL DEBTS AND CONTRACTS — LIABILITY IN QUASI CONTRACT. — A town treasurer who paid a town obligation without any previous authority sued the town in quasi-contract for money had and received. *Held*, that he cannot recover. *Baldwin v. Inhabitants of Prentiss*, 74 Atl. 1038 (Me.).

A municipality must generally pay for the benefits received under a contract *intra vires* but void because made in an unauthorized manner. *Brown v. City of Atchinson*, 39 Kan. 37, 54; *Chelsea Savings Bank v. City of Ironwood*, 130 Fed. 410, 412. But in New England towns, since the private property of the citizens can be taken upon a judgment against the town, the powers and proceedings of the town are construed with the greatest strictness. See *Bloomfield v. Charter Oak Bank*, 121 U. S. 121; *Lovejoy v. Inhabitants of Foxcroft*, 91 Me. 367. Accordingly, the opposite result has there been reached. *Otis v. Inhabitants of Stockton*, 76 Me. 506. It is clear that the plaintiff in the principal case, having not even an apparent authority from the town, cannot recover. Fatal also to the plaintiff's quasi-contractual right is the fact that no request was made by the party unjustly enriched. *Kelley v. Lindsey*, 7 Gray (Mass.) 287; *Homestead Co. v. Valley R. R.*, 17 Wall. (U. S.) 153, 166. Although contrary to the general rule, some courts have held a request unnecessary when the action is against a private person. *Perkins v. Boothby*, 71 Me. 91, 97. Yet even these courts hold that in the case of a municipality such request is necessary to maintain an action in quasi-contract. *Otis v. Inhabitants of Stockton*, 76 Me. 506. See *Perkins v. Boothby*, 71 Me. 91, 97. In cases like the present the desire to prevent unjust enrichment is counterbalanced by the desire to protect the townspeople from unwarranted expenditure by their officials, and the comparative weight attached to one or the other element accounts for the conflict in the authorities.